

STATE PERSONNEL BOARD CALENDAR



MAY 3, 2005

SACRAMENTO, CALIFORNIA

State of California

Memorandum

DATE: April 22, 2005

TO: ALL INTERESTED PARTIES

FROM: STATE PERSONNEL BOARD - Appeals Division

SUBJECT: Notice and Agenda for the **May 3, 2005**, meeting of the State Personnel Board.

PLEASE TAKE NOTICE that on May 3, 2005, at the offices of the State Personnel Board, located at 801 Capitol Mall, Room 150, Sacramento, California, the State Personnel Board will hold its regularly scheduled meeting. Pursuant to Government Code section 11123, a teleconference location may be conducted for this meeting at 320 W. 4th Street, Los Angeles, California.

The attached Agenda provides a brief description of each item to be considered and lists the date and approximate time for discussion of the item.

Also noted is whether the item will be considered in closed or public session. Closed sessions are closed to members of the public. All discussions held in public sessions are open to those interested in attending. Interested members of the public who wish to address the Board on a public session item may request the opportunity to do so.

Should you wish to obtain a copy of any of the items considered in the public sessions for the May 3, 2005, meeting, please contact staff in the Secretariat's Office, State Personnel Board, 801 Capitol Mall, MS 22, Sacramento, California 95814 or by calling (916) 653-0429 or TDD (916) 654-2360, or the Internet at:

<http://www.spb.ca.gov/calendar.htm>

Should you have any questions regarding this Notice and Agenda, please contact staff in the Secretariat's Office at the address or telephone numbers above.



WAYNE D. GROSS
Secretariat's Office

Attachment



CALIFORNIA STATE PERSONNEL BOARD MEETING¹

801 Capitol Mall
Sacramento, California

Public Session Location – 801 Capitol Mall

Sacramento, California, Room 150
Teleconference – 320 West 4th Street²
Los Angeles, California, Suite 620

Closed Session Location – 801 Capitol Mall

Sacramento, California, Room 141
Teleconference – 320 West 4th Street
Los Angeles, California Suite 620

FULL BOARD MEETING – MAY 3, 2005

¹ Sign Language Interpreter will be provided for Board Meeting upon request - contact Secretariat at (916) 653-0429, or CALNET 453-0429, TDD (916) 654-2360.

²Pursuant to Government Code section 11123, a teleconference location may be conducted for this meeting at 320 West 4th Street, Los Angeles, California.

FULL BOARD MEETING AGENDA³

MAY 3, 2005

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(9:00 a.m. – 9:30 a.m.)

- 1. ROLL CALL**
- 2. REPORT OF THE EXECUTIVE OFFICER - Floyd D. Shimomura**
- 3. REPORT ON THE PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)**
- 4. REPORT OF THE CHIEF COUNSEL - Elise Rose**
- 5. NEW BUSINESS**
- 6. REPORT ON LEGISLATION - Sherry Hicks**

The Board may be asked to adopt a position with respect to the bills listed on the legislation memorandum attached hereto.

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(9:30 a.m. – 10:00 a.m.)

- 7. ORAL ARGUMENT**

Oral argument in the matter of **DARYL STONE, CASE NO. 04-0279A.**
Appeal from dismissal. Police Officer I. Developmental Services.

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(10:00 a.m. – 10:30 a.m.)

- 8. PSC #05-01**

Appeal of the International Union of Operating Engineers from the Executive Officer's January 5, 2005 Approval of Contracts for Drilling Services between the California Department of Transportation and URS Corporation and Geocon consultants, Inc.

³ The Agenda for the Board can be obtained at the following internet address:
<http://www.spb.ca.gov/calendar.htm>

CLOSED SESSION OF THE STATE PERSONNEL BOARD

(10:30 a.m. – 11:00 a.m.)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(11:00 a.m. – 11:30 a.m.)

9. SECURITY AT 801 CAPITOL MALL – Lori Gillihan

SPB staff will discuss proposed changes to improve security at 801 Capitol Mall.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

(11:30 a.m. – 12:00 p.m.)

10. DELIBERATION ON ADVERSE ACTIONS, DISCRIMINATION COMPLAINTS, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES

Deliberations on matters submitted at prior hearing; on proposed, rejected, remanded, and submitted decisions; petitions for rehearing; and other matters related to cases heard by administrative law judges of the State Personnel Board or by the Board itself. [Government Code Sections 11126 (d), and 18653 (2).]

11. PENDING LITIGATION

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial. [Government Code sections 11126(e)(1) and 18653.]

State Personnel Board v. Department of Personnel Administration,
California Supreme Court Case No. S119498.

State Personnel Board v. California State Employees Association,
California Supreme Court Case No. S122058.

Connerly v. State Personnel Board, California Supreme Court
Case No. S125502.

International Union of Operating Engineers v. State Personnel Board,
Public Employment Relations Board (PERB) Case No. SA-CE-1295-S.

State Compensation Ins. Fund v. State Personnel Board/CSEA,
Sacramento Superior Court No. 04CS00049.

SEIU Local 1000 (CSEA) v. State Personnel Board
Sacramento Superior Court No. 05CS00374

The Copley Press, Inc. v. San Diego Superior Court
California Supreme Court No. S128603

12. RECOMMENDATIONS TO THE LEGISLATURE

Deliberations on recommendations to the legislature.
[Government Code section 18653.]

13. RECOMMENDATIONS TO THE GOVERNOR

Deliberations on recommendations to the Governor. [Government Code section 18653.]

LUNCH

(12:00 p.m. – 1:00 p.m.)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(1:00 p.m. – 1:45 p.m.)

14. 21st Century Project – John Harrigan

The 21st Century Project is a statewide, multi-year effort to replace existing payroll and human resources systems and their associated business processes, with a modern, integrated and automated Human Resources Management System that will utilize best practices in human resources and the most current proven technologies. The 21st Century Project will impact all departmental personnel and human resources operations.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

(1:45 p.m. – 2:00 p.m.)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(2:00 p.m. – onwards)

15. **DISCUSSION OF COMING BOARD MEETING SCHEDULE OF MAY 17, 2005, IN SACRAMENTO, CALIFORNIA**
16. **ADOPTION OF THE STATE PERSONNEL BOARD SUMMARY MINUTES**
17. **EVIDENTIARY CASES - (See Case Listing on pages 8-13)**

The Board Administrative Law Judges conduct evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.

18. **RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE SECTION 18671.1 EXTENSION - (See Agenda page 19)**
19. **NON-EVIDENTIARY CASES - (See Case Listing on pages 13-16)**
20. **NON-HEARING CALENDAR**

Proposals are made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff.

NONE

21. **STAFF CALENDAR ITEMS FOR BOARD INFORMATION**
- NONE**

22. **CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY**

This section of the Agenda serves to inform interested individuals and departments of proposed and approved CEA position actions.

The first section lists position actions that have been proposed and are currently under consideration.

Any parties having concerns with the merits of a proposed CEA position action should submit their concerns in writing to the Classification and Compensation Division of the Department of Personnel Administration, the Merit Employment and Technical Resources Division of the State Personnel Board, and the department proposing the action.

To assure adequate time to consider objections to a CEA position action, issues should be presented immediately upon receipt of the State Personnel Board Agenda in which the proposed position action is noticed as being under consideration, and generally no later than a week to ten days after its publication.

In cases where a merit issue has been raised regarding a proposed CEA position action and the dispute cannot be resolved, a hearing before the five-member Board may be scheduled. If no merit issues are raised regarding a proposed CEA position action, and it is approved by the State Personnel Board, the action becomes effective without further action by the Board.

The second section of this portion of the Agenda reports those position actions that have been approved. They are effective as of the date they were approved by the Executive Officer of the State Personnel Board.

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

NONE

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

NONE

23. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, & OTHER APPEALS

Deliberations to consider matter submitted at prior hearing. [Government Code sections 11126(d), 18653.]

24. WRITTEN STAFF REPORT FOR BOARD INFORMATION

25. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY

26. BOARD ACTIONS - (See Agenda - page 17)

These items have been taken under submission by the State Personnel Board at a prior meeting and may be before the Board for a vote at this meeting. This list does not include evidentiary cases, as those cases are listed separately by category on this agenda under Evidentiary Cases.

A D J O U R N M E N T

17. EVIDENTIARY CASES

The Board Administrative Law Judges conduct evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.

A. BOARD CASES SUBMITTED

These items have been taken under submission by the State Personnel Board at a prior meeting. Cases that are before the Board for vote will be provided under separate cover.

(1) **FRANK GARCIA, CASE NO. 04-0092P**

Appeal from dismissal

Classification: Chief Engineer I

Department: Department of Corrections

B. CASES PENDING

ORAL ARGUMENTS

These cases are on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

(1) **DARYL STONE, CASE NO. 04-0279A**

Appeal from dismissal

Classification: Police Officer I

Department: Department of Developmental Services

C. CHIEF COUNSEL RESOLUTIONS

(1) **STEVE VIERO, CASE NO. 01-2978B**

Appeal from dismissal

Classification: State Fire Marshall

Department: Department of Forestry and Fire Protection

Action: The Board adopted a resolution remanding the matter to an Administrative Law Judge to take evidence and make further findings on whether the parties have complied with the stipulated settlement.

COURT REMANDS

This case has been remanded to the Board by the court for further Board action.

- (1) **FRANK OLIVAS, CASE NO. 02-3390**
Appeal from demotion
Classification: Correctional Sergeant
Department: Department of Corrections

Action: The Board adopted a resolution setting aside its decision dated January 13, 2004, and issuing a new decision modifying the penalty to a demotion for one year.

STIPULATIONS

These stipulations have been submitted to the Board for Board approval, pursuant to Government Code, section 18681.

NONE

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

PROPOSED DECISIONS

These are ALJ proposed decisions submitted to the Board for the first time.

- (1) **CLETUS CURAH, CASE NO. 04-2146R**
Appeal from dismissal
Classification: Transportation Engineer (Civil)
Department: Department of Transportation
- (2) **MICHELLE FLORENTINE, CASE NO. 04-1771E**
Appeal from denial of reasonable accommodation request
Classification: Senior Legal Typist
Department: State Compensation Insurance Fund
- (3) **LAWRENCE KILGORE, CASE NO. 04-2748**
Appeal from official letter of reprimand
Classification: Correctional Lieutenant
Department: Department of Corrections

- (4) **TIMOTHY PORT, CASE NO. 04-2372**
Appeal from dismissal
Classification: Correctional Officer
Department: Department of Corrections
- (5) **SHERRON REED, CASE NO. 04-1886E**
Appeal from denial of sexual harassment complaint
Classification: Facility Captain
Department: Department of Corrections
- (6) **GULSHAN SHARMA, CASE NO. 04-2056**
Appeal from ten working day suspension
Classification: Office Assistant (General)
Department: Employment Development Department
- (7) **RAYMOND SLEDGE, CASE NO. 04-1708**
Appeal from ten working day suspension
Classification: Youth Correctional Counselor
Department: Department of Youth Authority
- (8) **BESS SMITH, CASE NO. 04-1519**
Appeal from five working days suspension
Classification: Eligibility Worker
Department: Department of Social and Employment Services
- (9) **RON STEVENSON, CASE NO. 04-1507**
Appeal from fifteen working days suspension
Classification: Accounting Officer (Specialist)
Department: Employment Development Department
- (10) **PETER TURNER, CASE NO. 04-2837**
Appeal from dismissal
Classification: Transportation Surveyor
Department: Department of Transportation
- (11) **ALANA J. VISS, CASE NO. 04-2126**
Appeal from dismissal
Classification: Correctional Counselor II
Department: Board of Prison Terms
- (12) **WILLIAM WILEY, CASE NO. 04-1469**
Appeal from non-punitive termination
Classification: Heavy Equipment Mechanic
Department: Department of Transportation

(13) CRAIG STEVEN WILLIAMS, CASE NO. 05-0044

Appeal from ten working day suspension

Classification: Officer, California Highway Patrol

Department: Department of California Highway Patrol

Proposed Decisions Taken Under Submission At Prior Meeting

These are ALJ proposed decisions taken under submission at a prior Board meeting, for lack of majority vote or other reason.

NONE

PROPOSED DECISIONS AFTER BOARD REMAND

NONE

PROPOSED DECISIONS AFTER SPB ARBITRATION

NONE

E. PETITIONS FOR REHEARING

(1) ROBERT RIPANI, CASE NO. 04-2117P

Appeal from five percent reduction in salary for three qualifying pay periods

Classification: Business Taxes Compliance Supervisor II

Department: Board of Equalization

(2) RICHARD SAUNDERS, CASE NO. 03-3752P

Appeal from demotion

Classification: Correctional Sergeant I

Department: Department of Corrections

(3) WILLIAM WOOD, CASE NO. 04-2431P

Appeal from dismissal

Classification: Automobile Mechanic, CF

Department: Department of Corrections

ALJ PROPOSED DECISIONS ADOPTED BY THE BOARD

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

NONE

WHISTLEBLOWER NOTICE OF FINDINGS

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et seq. and Title 2, California Code of Regulations, section 56 et seq.

NONE

F. PENDING BOARD REVIEW

These cases are pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

- (1) **JACOB ARIS, CASE NO. 04-1378ER AND
NICHOLAS RUTHART, CASE NO. 04-1409ER**
Appeal from discrimination complaint
Classification: Employment Program Representatives
Department: Employment Development Department

Proposed decision rejected January 25, 2005

Transcript prepared

Pending stipulation

- (2) **PATRICK BARBER, CASE NO. 04-0279**
Appeal from dismissal
Classification: Youth Correctional Counselor
Department: Department of the Youth Authority

Proposed decision adopted November 3, 2004

Modifying dismissal to 45-calendar day suspension

Petition for Rehearing granted February 8-9, 2005

Transcripts prepared

Pending oral argument June 7-8, 2005, Sacramento

- (3) **JON CHASE, CASE NO. 04-0392**
Appeal from 30 working days suspension
Classification: Associate Management Auditor
Department: Employment Development Department

Proposed decision rejected April 19, 2005

Pending Transcript

- (4) **CHAD LOOK, CASE NO. 04-1789**
Appeal from 60 work days suspension
Classification: Correctional Officer
Department: Department of Corrections
- Proposed decision rejected January 11, 2005
Transcript prepared
Pending oral argument June 7-8, 2005, Sacramento
- (5) **JAMES MCAULEY, CASE NO. 04-1856**
Appeal from dismissal
Classification: Associate Transportation Engineer, Caltrans
(Registered)
Department: Department of Transportation
- Proposed decision rejected March 8-9, 2005
Transcript prepared
Pending oral argument June 7-8, 2005, Sacramento
- (6) **KIM RITTENHOUSE, CASE NOS. 03-3541A & 03-3542E**
Appeal from denial of reasonable accommodation
and from constructive medical termination
Classification: Office Technician (General)
Department: Department of Fish and Game
- Proposed decision rejected May 18, 2004
Pending transcript
- (7) **DARYL STONE, CASE NO. 04-0279**
Appeal from dismissal
Classification: Peace Officer I
Department: Department of Developmental Services
- Proposed decision rejected on February 8, 2005
Transcripts prepared
Pending oral argument May 3, 2005, Sacramento

19. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

WITHHOLD FROM CERTIFICATION
CASES HEARD BY A STAFF HEARING OFFICER

NONE

WITHHOLD FROM CERTIFICATION
CASES NOT HEARD BY A STAFF HEARING OFFICER

- (1) **THEODORE FARIAS, CASE NO. 04-0668**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; omitted pertinent and furnished inaccurate information.
- (2) **PETER HARRIS, NO. 04-1743**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; omitted pertinent information and had a negative employment record.
- (3) **MARCEY HARRIS-SJOLANDER, CASE NO. 04-1749**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; omitted pertinent and furnished inaccurate information, negative employment record.
- (4) **AARON ROBERTS, CASE NO. 04-1021**
Classification: Correctional Officer
Department: Corrections
Issue: The appellant omitted pertinent information during the selection process; negative law enforcement contacts, and failure to comply with legal obligations.
- (5) **ROBERT TWELLS, CASE NO. 04-1216**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability and illegal drug use.
- (6) **STEVEN TWU, CASE NO. 04-1217**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; firearms prohibition.

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

Cases heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional. The Board will be presented recommendations by a Hearing Panel on each appeal.

NONE

**C. EXAMINATION APPEALS
MINIMUM QUALIFICATIONS
MERIT ISSUE COMPLAINTS**

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

EXAMINATION APPEALS

NONE

MINIMUM QUALIFICATIONS

NONE

MERIT ISSUE COMPLAINTS

NONE

**D. RULE 211 APPEALS
RULE 212 OUT OF CLASS APPEALS
VOIDED APPOINTMENT APPEALS**

Cases heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board. The Board will be presented recommendations by a Staff Hearing Officer for final decision on each appeal.

NONE

E. REQUEST TO FILE CHARGES CASES

Investigated by Appeals Division staff. The Board will be presented recommendations by Appeals Division staff for final decision on each request.

(1) GEORGE SHINN, CASE NO. 04-1093

Classification: Plumber

Department: Corrections

Issue: The charging party requests charges be filed under various subsections of Government Code section 19572 against a state employee.

PETITIONS FOR REHEARING CASES

NONE

F. PSYCHOLOGICAL SCREENING CASES

Cases reviewed by Appeals Division staff, but no hearing was held. It is anticipated that the Board will act on these proposals without a hearing.

NONE

SUBMITTED

1. **TEACHER STATE HOSPITAL (SEVERELY), ETC.**
Departments of Mental Health and Developmental Services.
(Hearing held December 3, 2002.)
2. **VOCATIONAL INSTRUCTOR (SAFETY)(VARIOUS SPECIALTIES)**
Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)
3. **TELEVISION SPECIALIST (SAFETY)**
The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003.)
4. **HEARING - PSC #04-03**
Appeal of the California State Employees Association from the Executive Officer's April 15, 2004, Approval of Master Contracts between the California Department of Corrections and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief. (Hearing held August 12, 2004.)
5. **HEARING**
Proposed new and revised State Personnel Board Regulations effecting equal opportunity, discrimination complaints and reasonable accommodation policies and procedures. (Hearing held July 7, 2004.)
6. **HEARING - PSC #04-04**
Appeal of the Secretary of State from the Executive Officer's October 15, 2004 disapproval of SOS's contract with Renne & Holtzman Public Law Group upon the review request submitted by the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment. (Hearing held March 9, 2005)
7. **HEARING - PSC #04-06**
Appeal of the California Regional Water Quality Control Board (RWQCB) from the Executive Officer's October 27, 2004 Disapproval of a Contract with the City of Glendale (Glendale) Reviewed at the Request of the California Association of Professional Scientists (CAPS) (Hearing held April 6, 2005.)

NOTICE OF GOVERNMENT CODE SECTION 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE SECTION 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code section 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *



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(Cal. 5/3/05)

TO: Members
State Personnel Board

FROM: State Personnel Board - Legislative Office

SUBJECT: LEGISLATION

The status of major legislation being followed for impact on Board programs and the general administration of the State Civil Service Merit System is detailed in the attached report.

Any legislative action that takes place after the printing of this report, which requires discussion with the Board, will be covered during the Board meeting.

Please contact me directly should you have any questions or comments regarding this report. I can be reached at (916) 653-0453.

A handwritten signature in cursive script that reads 'Sherry Hicks'.

Sherry Hicks
Director of Legislation

Attachment

**STATE PERSONNEL BOARD
LEGISLATIVE TRACKING
REPORT
2005-06 SESSION**

**Status as of
April 18, 2005**



ASSEMBLY/SENATE BILLS
(Tracking)

BILL/ AUTHOR	BOARD POSITION	SUBJECT	STATUS OF BILL
AB 38 (Tran)	OPPOSE	AB 38 proposes suspending the salaries of specific state board and commission members for the fiscal years 2005 through 2009. The State Personnel Board is one of those boards that would not receive salaries for those fiscal years.	Assembly Business and Professions Committee
AB 47 (Cohn)		This bill would prohibit, except under specified circumstances, the Department of General Services from authorizing the Department of Corrections to enter into contracts for medical care services without seeking competitive bids for those contracts	Assembly Business and Professions Committee
AB 94 (Haynes)	NEUTRAL	Among other things, this bill would require various state agencies to prepare and provide a report to the Senate Committee on Rules, the Assembly Committee on Rules, and to each member of the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget on the financial activities of the agency, board, commission, department, or office for the 2000-01, 2001-02, 2002-03, 2003-04 and 2004-05 fiscal years no later than January 15, 2006, and for each subsequent fiscal year by January 15 of the following year.	Assembly Business and Professions Committee

AB 124 (Dymally)	SUPPORT	This bill would repeal requirements to annually establish employment goals and timetables based on race or gender that were invalidated by the California Court of Appeal in <i>Connerly v. State Personnel Board</i> , and re-title Chapter 12 of Part 2, Division 5, Title 2 of the Government Code from "Affirmative Action Program" to "State Equal Employment Opportunity Program". In addition, it would strengthen equal employment opportunity requirements.	In Senate. Not assigned to a Committee
AB 194 (Dymally)		The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend. This bill would remove the requirement that the legislative body be allowed to cure or correct an alleged violation prior to commencement of a legal action and would remove provisions that preclude specified actions from being determined to be null and void.	Re-referred to Assembly Committee on Local Government
AB 195 (Dymally)		This bill would expand the remedies available to individuals who file discrimination complaints with the State Personnel Board by authorizing the State Personnel Board to award reasonable attorney's fees and costs, including expert witness fees.	Assembly Appropriations Committee. Suspense File.
AB 277 (Mountjoy)	SUPPORT	This bill also would authorize the Board of Administration of the Public Employees' Retirement System to hold closed sessions when considering matters relating to the development of rates and competitive strategy for long-term care insurance plans.	From the Government Organization Committee to Assembly PERSS Committee
AB 297 (Yee)	SUPPORT	This bill would specify that a current patient of a facility operated by the State Department of Mental Health may not file these charges against a state employee.	From Consent Calendar in Assembly Appropriations to Second Reading File

AB 219 (Nakanishi)		This bill would require all state departments, commissions, or other agencies to submit an electronic copy of each publication issued to the State Library. It would require the State Library to create and maintain a Web site that includes a monthly or quarterly list of each state publication issued during the immediately preceding month or quarter and that provides access to an electronic copy of each publication. It would provide that if a copy of a state publication is available on the State Library Web site, it shall be deemed distributed in compliance with specified redistribution requirements.	Assembly Appropriations Committee (Suspense File)
AB 271 (BLAKESLEE)		This bill would require that any person appointed to a scientist class in state service possess a four-year degree in a scientific discipline from an accredited university.	Assembly Appropriations Committee
AB 529 (Goldberg)		This bill would authorize an employee who alleges that the trustees have not complied with this requirement with respect to his or her situation to request a hearing by the State Personnel Board. The bill would authorize the State Personnel Board to render a decision to determine whether the trustees have complied with the pertinent requirements in that instance. This bill contains other related provisions and other existing laws.	Assembly Appropriations Committee
AB 708 (Karnette)		This bill would require the California State University to employ an independent investigator on all complaints. This bill contains other existing laws.	Assembly Appropriations Committee (Suspense File)
AB 775 (Yee)		This bill would prohibit any state or local governmental agency, or any public or private agency, organization, entity, or program that receives state funding, from using any child, or permitting any child to be used, as an interpreter, as defined, in any hospital, clinic, or physician office in the context of diagnosis and treatment, except as specified. The bill would require each such agency, organization, entity, or program that receives state funding to have in place, and available for inspection, an established procedure for providing competent interpretation services that does not involve the use of children, as defined, in this manner. This bill contains other related provisions and other existing laws.	Assembly Business and Professions Committee

AB 836 (Huff)		This bill would require that these budgets utilize a zero-based budget method, as defined.	Assembly Budget Committee
AB 1066 (Horton, Jerome)		This bill would amend existing law to provide that a state agency: (1) may not pay a contractor under a personal services contract until the State Personnel Board (SPB) had first approved that contract; (2) may not seek to enter into a contract with a contractor if SPB had disapproved a prior contract with that same contractor for the same services within the preceding 12 months; and (3) must give 10 days prior notice to Bargaining Unit 12 of any contract the agency intends to enter into that may affect that bargaining unit.	Assembly Appropriations Committee
SB 165 (Speier)		This bill would create the Office of the Special Counsel (OSC) as a separate branch of the State Personnel Board (Board), to protect state employees and applicants for state employment who have been retaliated against as a result of their having made protected disclosures under the Whistleblower Protection Act (Government Code section 8547 <i>et seq.</i>).	From Senate Committee on Government Modernization, Efficiency, and Accountability to Judiciary Committee
SB 1083 (Ackerman)		This bill would provide that the California Medical Assistance Commission shall be reimbursed at the annual salary of members of the State Personnel Board.	Senate Committee on Health
SB 1095 (Chesbro)		This bill would authorize the Director of the California Conservation Corps to make limited-term (LT) appointments, beyond the current 2 years, to up to 4 years without SPB approval.	Senate Committee on Government Modernization, Efficiency, and Accountability



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MEMORANDUM

Date: April 15, 2005

To: Members of the State Personnel Board

From: Karen J. Brandt, Senior Staff Counsel
State Personnel Board

Reviewed: Elise S. Rose, Chief Counsel
State Personnel Board

Subject: PSC No. 05-01: Appeal of the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment from the Executive Officer's December 28, 2004 Approval of a Contract for Legal Services between the California Department of Health Services and Covington & Burling

REASON FOR HEARING

The California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE) have appealed to the State Personnel Board from the Executive Officer's December 28, 2004 decision approving the contract (Contract) between the California Department of Health Services (DHS) and Covington & Burling (Covington) for legal services with respect to the development and implementation of California's Redesign 1115 Medicaid Waiver. The Contract's term is from July 1, 2004 through June 30, 2005 and its total amount is \$1 million. (A copy of the Executive Officer's decision is attached hereto as Attachment 1.)

BACKGROUND

According to DHS, pursuant to the Contract, Covington is assisting DHS in the development and implementation of California's Redesign 1115 Medicaid Waiver, which is intended to redesign Medi-Cal to provide for the long-term financial viability of the program and its impact on the overall state budget. The redesign effort requires changes in state law, changes to California's state plan, and approval from the federal government to operate significant portions of Medi-Cal under a demonstration waiver pursuant to Section 1115 of the Social Security Act. Covington is providing legal advice, based upon its expertise as to what is occurring nationally in the Medicaid program in other states, to assist in developing redesign options and drafting a Waiver

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application that will comply with federal law. CASE asserts that this work can be done adequately and competently by civil service employees.

PROCEDURAL HISTORY

By letter dated September 13, 2004, pursuant to Government Code section 19132 and SPB Rule 547.59 et seq., CASE asked SPB to review the Contract for compliance with Government Code section 19130(b).

On November 22, 2004, DHS submitted a copy of the Contract, the Agreement Summary (Form STD 215) and the June 30, 2004 notice given to CASE pursuant to Government Code section 11045, subdivision (a)(1).¹

On November 24, 2004, DHS submitted its written response to CASE's review request.

CASE submitted its reply to DHS's response on December 6, 2004.

The Executive Officer issued his decision approving the Contract on December 28, 2004. ([Attachment 1](#))

APPEAL BRIEFS

CASE timely appealed from the Executive Officer's decision.

CASE filed its opening brief on February 28, 2005. ([Attachment 2](#))

DHS filed its response on March 28, 2005. ([Attachment 3](#))

¹ Government Code section 11045, subdivision (a)(1) provides:

Whenever a state agency requests the consent of the Attorney General to employ outside counsel, as required by Section 11040, the state agency shall within five business days of the date the request is transmitted to the Attorney General provide the designated representative of State Employees Bargaining Unit 2 with written notification of the request. The notice shall include the items enumerated in subdivision (d).

Subdivision (d) provides:

"Written notice" within the meaning of this section shall include, but not be limited to, all of the following:

- (1) A copy of the complaint or other pleadings, if any, that gave rise to the litigation or matter for which a contract is being sought, or other identifying information.
- (2) The justification for the contract, pursuant to subdivision (b) of Section 19130.
- (3) The nature of the legal services to be performed.
- (4) The estimated hourly wage to be paid under the contract.
- (5) The estimated length of the contract.
- (6) The identity of the person or entity that is entering into the contract with the state.

CASE filed its reply on April 1, 2005. (Attachment 4)

ISSUE

This matter presents the following issue for the Board's review:

Is the Contract justified under Government Code section 19130, subdivision (b)(3)?

SUMMARY OF POSITIONS

The parties' full arguments on these issues are contained in the Attachments and the Board's file. Set forth below is a summary of their arguments.

Government Code section 19130, subdivision (b)(3)

Government Code section 19130, subdivision (b)(3) authorizes a state agency to enter into a personal services contract with a private contractor when:

The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

CASE's Position

CASE asserts that the documents submitted by DHS do not support the Executive Officer's approval of the Contract. The purpose of the Contract was for Covington to assist DHS in developing and implementing California's Redesign 1115 Medicaid Waiver. DHS needed to obtain changes in the federal rules that regulate the California Medicaid program. This required changes in state law and in California's Medicaid state plan, and approval from the federal government. In the past, civil service attorneys have applied for and received waivers for the California Medicaid system. Although DHS asserts that the "magnitude" of the current waiver request was outside the knowledge, experience and ability of civil service attorneys, DHS did not identify what "expert knowledge, experience and ability" Covington is providing that is not available in the civil service and that would allow Covington to perform the work when civil service attorneys could not. Moreover, it appears that the "expertise, knowledge and ability" that Covington is providing is, in fact, that of the Subcontractor. There is no reason why DHS could not contract directly with the Subcontractor, and have civil service attorneys use the information provided by the Subcontractor to obtain the waivers for the Medicaid program.

DHS's Position

DHS asserts that the Declaration of Stan Rosenstein, Deputy Director of Medical Care Services, filed with SPB's Executive Officer, makes clear that while Alicia Smith & Associates, the subcontractor, is providing important expertise in the areas of Medicaid financing and policy, and assistance in data gathering, fiscal analysis, negotiation and implementation, Covington will not depend exclusively on the subcontractor to perform the work under the Contract. Covington is playing a fundamental role, based upon its unique skills and expertise, drafting the Waiver; negotiating with the Centers for Medicare and Medicaid Services, Congressional offices and other branches, agencies and departments of the federal government; and providing reports, data files, documentation, analysis tools, legal opinions and legal advice. Covington has already developed alternative financing systems for the states of Washington, Michigan and Kentucky. This unique experience is helpful to California's development of its own waiver. In addition, Covington has shown DHS how to incorporate New York's precedent setting approach into California's waiver. DHS would not have known about this funding option without Covington's experience and expertise. Covington has also helped New Hampshire and Louisiana negotiate waiver agreements with the federal government.

According to DHS, Covington possesses the following expertise and knowledge that state employees do not have: (1) knowledge of the Medicaid rules from different states; (2) knowledge of different types of waivers submitted by other states and which of those types have been approved; (3) knowledge of how to successfully calculate an upper payment limit and a budget neutrality calculation for different types of waivers; (4) knowledge of how to present intergovernmental transfers and certified public expenditure-based waiver programs in a manner that the federal government will approve; and (5) expertise in successfully helping other states to obtain waiver approvals of the type California is seeking.

Executive Officer's Decision

With respect to Government Code section 19130, subdivision (b)(3), the Executive Officer found:

"CASE asserts that DHS has failed to show that the contracted services cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system. In support of its position, CASE points to DHS's admission that, in the past, civil service attorneys have applied for and received waivers for the California Medicaid system. In addition, CASE asserts that, in providing the contracted services, Covington is relying substantially upon the expert input of a subcontractor, Alicia Smith &

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Associates. CASE argues that DHS has failed to submit sufficient information to show that the civil service attorneys, who have applied for waivers in the past, could not adequately and satisfactorily perform the contracted services, especially if they too could call upon the expertise of the same subcontractor.

Contrary to CASE's assertions, DHS has submitted substantial information to show that the complexity and magnitude of the waiver that DHS is currently requesting is significantly greater than its earlier waiver requests. Drafting the current waiver to both comply with federal law and meet the policy needs of California requires expert knowledge, experience, and ability that are not currently available through the civil service system. DHS's submissions show that Covington's significant expertise in the applicable federal law and its vast experience with other states that have applied for similar waivers cannot be matched in the civil service.

DHS has submitted sufficient information to show that Covington is providing expert knowledge, experience, and ability that is not available through the civil service system. The Contract is, therefore, authorized under Government Code section 19130, subdivision (b)(3)."

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**ATTACHMENTS FOR THE
HEARING ITEMS ARE
AVAILABLE UPON REQUEST
BY CONTACTING THE
SECRETARIAT OFFICE AT:
(916) 653-0429 OR
TDD (916) 654-2360**